

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA

v.

H WAYNE MCMULLEN (01)

No. 4:16-CR-032-A

**MOTION TO BIFURCATE SENTENCING HEARING
AND TO CONTINUE RESTITUTION HEARING**

TO THE HONORABLE JOHN MCBRYDE, UNITED STATES DISTRICT JUDGE:

The United States of America, by and through her Assistant United States Attorney, files this Motion to Bifurcate the Sentencing Hearing and to Continue the Restitution Hearing, and would respectfully show this Court as follows:

I.

The captioned case is set for sentencing on Friday, June 17, 2016, at 9:00 a.m. On June 14, 2016, the government received a request to submit a claim for restitution in the McMullen case. On June 15, 2016, the government was contacted by Jennifer Freeman who advised that the Marsh law firm represents "Jenny," a victim whose images were found in McMullen's collection of child pornography and which are described in the charged Information. On the same date, the government confirmed that two of the charged files appearing in the Information are in fact of the victim known as "Jenny."

Freeman advised that the Marsh law firm was retained on or about April 27, 2016, to seek restitution for this victim and that it is still in the process of obtaining a psychological evaluation and a report detailing economic losses for this victim. Freeman also requested an opportunity to speak with defense counsel regarding settlement of their client's restitution claim, to which the government does not object. Freeman advised that she left a voice mail message for defense counsel on June 15, 2016, but has been unable thus far to confer with him about restitution.

II.

The government anticipates that both sides will be ready to proceed on June 17, 2016, with the scheduled sentencing hearing as it relates to matters other than restitution. Therefore, to allow the parties to address the question of restitution without otherwise delaying the sentencing hearing, the government requests the Court bifurcate the sentencing hearing, deferring the final determination of restitution for a period of time not to exceed 90 days, pursuant to 18 U.S.C. § 3664(d)(5).

The government submits good cause exists to bifurcate the sentencing hearing. The Marsh law firm was recently retained to represent the victim—less than two months prior to this sentencing hearing. Freeman also stated that the victim is located in a rural town, has had little or no prior therapy, and that the therapeutic process and reports are taking some time to complete. The information provided by the Marsh firm suggests that the Court may make a determination based on its current submission;

however, should the Court and the parties seek supporting documentation, then Freeman advised that she was still in the process of obtaining the requisite documentation to support the restitution claim.

Notwithstanding any other civil or criminal penalty provided by law, Congress has authorized as "mandatory" restitution for any offense brought under Chapter 110 of United States Code Title 18. 18 U.S.C. § 2259. The offense for which McMullen was convicted, Possession of Child Pornography, a violation of 18 U.S.C. § 2252, falls within Chapter 110.

III.

The victim has recently retained counsel and requests an opportunity to present her restitution request before this Court. The Court has authority to set a date not to exceed 90 days after the sentencing hearing to determine restitution losses. Therefore, the government moves the Court to bifurcate the sentencing hearing and set a date for a restitution hearing. This request is made so that justice may be done and not for the purpose of delay only.

Therefore, the United States respectfully moves the Court to grant this Motion.

Respectfully submitted,

JOHN R. PARKER
UNITED STATES ATTORNEY



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CERTIFICATE OF CONFERENCE

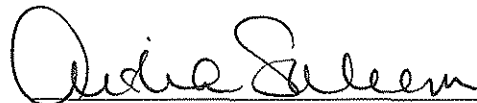
This is to certify that on June 15, 2016, the undersigned assistant United States attorney conferred by telephone with Reed Prospere, and he advised that he did not oppose a bifurcated hearing to allow for a continuance of the restitution hearing.



AISHA SALEEM
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2016, the foregoing Government's Motion was served by first class mail to Reed Prospere, counsel for defendant, at 8111 Preston Road, Suite 500, Dallas, Texas 75225 and to Marlo Cadeddu at 3232 McKinney Ave., Suite 700, Dallas, Texas 75204. The motion was also provided by email to attorneys Reed Prospere and Marlo Cadeddu to afford them an opportunity to review its contents prior to the sentencing hearing.



AISHA SALEEM
Assistant United States Attorney